

04 NCAC 16G .0312 OPTIONAL PROVISIONS IN PLAN OF CONVERSION

The plan of conversion may provide any of the following:

- (1) The applicant may commence the direct community offering or the public offering, or both, concurrently with or at any time during the subscription offering. The subscription offering may be commenced concurrently with or at any time after the mailing to members of the proxy statement authorized for use by the Commissioner of Banks. The subscription offering may be closed before the meeting of the members held to vote on the plan of conversion, provided that the offer and sale of capital stock shall be conditioned upon the approval of the plan of conversion by the members.
- (2) Directors, executive officers, and employees of the converting savings institution shall receive, without payment, nontransferable subscription rights to purchase shares of capital stock, to the extent that shares are available after satisfying the subscriptions of eligible account holders, supplemental eligible account holders, and voting members provided for under Items (2), (4) and (5) of Rule .0311 of this Section. The shares shall be allocated among directors, officers, and employees on an equitable basis such as by giving weight to length of service, compensation, and position, subject to the limitation in Item (7) of Rule .0311 of this Section on the amount of shares that may be purchased by any person, associate, or group of affiliated persons or group of persons otherwise acting in concert.
- (3) Any account holder receiving rights to purchase stock in the subscription offering shall also receive, without payment, nontransferable subscription rights to purchase up to one percent of the total offering of shares of capital stock, to the extent that the shares are available after satisfying the subscriptions provided for under Items (2), (4), and (5) of Rule .0311 of this Section, subject to conditions as may be provided in the plan of conversion. In the event of an oversubscription for the additional shares, the shares available shall be allocated among the subscribing eligible account holders, supplemental eligible account holders, and voting members on an equitable basis related to the amounts of their respective subscriptions, as may be provided in the plan of conversion.
- (4) The applicant may require members to return by a date certain a postage-paid written communication provided by the applicant, requesting receipt of a subscription offering circular or a preliminary or final offering circular in an offering pursuant to Item (10) of this Rule, in order to be entitled to receive an offering circular from the applicant; provided, that the subscription offering or the offering pursuant to Item (10) of this Rule shall not be closed until 30 days after the mailing by the applicant to members of the postage-paid written communication. If the subscription offering or the offering pursuant to Item (10) of this Rule is not commenced within 45 days after the meeting of members, any converting savings institution adopting this optional provision shall transmit, not more than 30 days prior to the commencement of the subscription offering or the offering pursuant to Item (10) of this Rule to each member who had been furnished with proxy solicitation materials, written notice of the commencement of the offering that shall state that the converting savings institution is not required to furnish an offering circular to a member unless the member returns by a date certain the postage-paid written communication provided by the converting savings institution requesting receipt of an offering circular.
- (5) The applicant may require eligible account holders and supplemental eligible account holders who are not voting members to return by a date certain a postage-paid written communication in accordance with the procedure established in Item (4) of this Rule.
- (6) Any residue of shares of the converting savings institution not sold in the subscription offering, in a public offering, or direct community offering may be sold as provided in the plan of conversion with the written consent of the Commissioner of Banks.
- (7) The number of shares that any person or group of persons affiliated with each other or otherwise acting in concert may subscribe for in the subscription offering may be made subject to a limit of not less than one percent of the total offering of the shares.
- (8) Any person exercising subscription rights to purchase capital stock shall be required to purchase a minimum number of shares, but the aggregate price for any minimum share purchase shall not exceed five hundred dollars (\$500.00).
- (9) The converted savings institution shall issue and sell, in lieu of shares of its capital stock, units of securities consisting of capital stock and long-term warrants or other equity securities, in which event any reference in the provisions of this Subchapter to capital stock shall apply to units of equity securities unless the context otherwise requires.

- (10) Instead of a separate subscription offering, all subscription rights issued in connection with the conversion shall be exercisable by delivery of completed and executed order forms to the underwriters or selling group for the public offering or pursuant to any other procedure, subject to the applicant demonstrating to the Commissioner of Banks the feasibility of the method of exercising such right and to such conditions as shall be provided in the plan of conversion.
- (11) The Commissioner of Banks may approve other equitable provisions as necessary to avert injury to the converting savings institution.
- (12) The proxy statement authorized by G.S. 54B-33 or G.S. 54C-33 may be in summary form, provided the proxy meets the requirements.
The date on which the summary proxy statement is mailed to members shall be deemed the date on which notice is given. Without the prior written consent of the Commissioner of Banks, the meeting of members shall not be held less than 20 days after the date on which the supplemental information statement is mailed to requesting members.
- (13) In the event that the converting institution is establishing a tax-qualified employee stock ownership plan (ESOP) for the benefit of its employees, then notwithstanding the priorities established under Items (2), (4), and (5) of Rule .0311 of this Section, the plan of conversion may provide that the ESOP may purchase up to 10 percent of the aggregate shares offered in the conversion prior to offering shares to eligible account holders, supplemental eligible account holders, or other voting members.
- (14) Eligible account holders shall be divided into two subcategories for purposes of determining the aggregate number of shares of conversion stock allocated to be purchased by account holders in each subcategory: those whose permanent residence is within the market area of the converting institution and those whose permanent residence is outside the market area of the converting institution. A plan of conversion that divides account holders into subcategories shall provide:
 - (a) That each eligible account holder who resides within the applicant's market area shall receive nontransferable subscription rights to purchase a number of shares based on the account holder's qualifying deposit balance up to the maximum purchase limitation established pursuant to Rule .0311(7) of this Section, provided that the aggregate number of shares of conversion stock to be allocated for purchase by eligible account holders within the converting institution's market area shall equal that number of shares (rounded to the nearest whole number) determined by multiplying the total number of shares of stock to be sold in the offering times a fraction the numerator of which is the sum of qualifying deposits held by eligible account holders residing inside the market area and the denominator of which is the sum of all qualifying deposits.
 - (b) That each eligible account holder who resides outside the applicant's market area shall receive nontransferable subscription rights to purchase a number of shares based on the account holder's qualifying deposit balance up to the maximum purchase limitations established pursuant to Rule .0311(7) of this Section, provided that the aggregate number of shares of conversion stock to be allocated for purchase by eligible account holders outside the converting institution's market area shall equal that number of shares (rounded to the nearest whole number) determined by multiplying the total number of shares of stock to be sold in the offering times a fraction the numerator of which is the sum of qualifying deposits held by eligible account holders residing outside the converting institution's market area and the denominator of which is the sum of all qualifying deposits.
 - (c) Within each subcategory, a formula to be used in the event of an oversubscription for the equitable allocation of shares of stock within the subcategory that relates to an eligible account holder's qualifying deposit balance.
 - (d) For the purposes of this Item, a converting institution shall define its "market area" to include each county in which it has an office and may include additional counties contiguous to those counties in which it maintains an office, regardless of whether such counties are in the State of North Carolina.

*History Note: Authority G.S. 54B-33; 54C-33; 54C-53;
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